IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 102 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LALBIBI AHMADMIYA & 4 - Appellant(s)
Versus
JIWABHAI RANCHHODBHAI PATEL & 1 - Defendant(s)

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Appearance :
MR DM THAKKAR for Appellant(s) : 1 - 5.
MR NK MAJMUDAR for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 19/12/2006

ORAL JUDGMENT

1. Mr.D.M. Thakkar, learned counsel for the appellants and Mr.Nirav Majumdar, learned counsel for the respondents.
2. Heard.

3. The defendants have filed the present Second Appeal being aggrieved by the judgment and decree dtd.24/12/1987 passed in Civil Appeal No.188 of 1984 by the 2nd Extra Assistant Judge, Kheda at Nadiad setting aside the judgment and decree passed by the learned Civil Judge (J.D.), Khambhat in Regular Civil Suit No.314 of 1978 on 27/9/1984 whereunder the learned Civil Judge has dismissed the suit filed by the present respondents – plaintiffs.

4. The facts necessary for disposal of the present appeal are that the appellants filed the suit stating inter-alia that they were in possession of Northern portion of Survey No.1519 admeasuring 28 Acres and 19 Gunthas, out of 4 Acres and 38 Gunthas, submitting further that the father of the defendant Nos.1 to 4 and defendant No.5 had sold the property under registered sale deed dtd.4/9/1972 in favour of the plaintiffs. They had submitted that the defendant Nos.1 to 4, successors of Ahamadmiya and defendant No.5 – Abdul Rehman Chhotumiya were trying to interfere with their possession and they were required to be restrained. Various objections were raised in the Written Statement that the Agreement between Ahmadmiya and the plaintiffs was void ab-initio under

sec.41 of the Evacuee Property Act, 1950 and as the plaintiffs were in illegal occupation of the property, no injunction could be granted in favour of the plaintiffs.

5. The trial court, after full trial, dismissed the suit but as the appellate court had allowed the appeal and decreed the suit, the defendnat Nos.1 to 4, successors of Ahmadmiya and the defendant No.5 – Abdul Rehman Chhotumiya, co-seller, are before this court.

6. The appeal has been admitted for hearing the parties on the following substantial question of law;

> "Whether in the facts and circumstances of the case, agreement entered into by the respondents and the deceased Ahmadmiya is ab initio void in view of the violation of provisions under section 41 of the Administration of Evacuee Property Act, 1950?"

7. The learned counsel for the appellants submitted that no injunction could be granted in favour of the respondents – plaintiffs, as the agreement between the respondents and Ahmadmiya was ab-initio void and as the plaintiffs

were in illegal rather unauthorized occupation of the property, their possession could not be protected.

8. Learned counsel for the respondents, on the other hand, submitted that rank trespasser who happens to be in settled possession, cannot be dispossessed, except in accordance with law, is the settled legal position. According to him, since after the purchase of the property in the year 1972, they continued to be in possession and under the circumstances, the defendants – appellants cannot be allowed to take law in their hands and dispossess the plaintiffs.

9. The findings recorded by the learned first appellate court are that the plaintiffs are in possession of the suit property and the defendants at present have no right, title or interest in the property. So far as the question of defendants' right, title or interest in the property is concerned, the same was not required to be examined in these proceedings, because, the plaintiffs were not required to prove that the defendants had no right, title or interest in the property. The defendants would be required to prove that they have right, title or interest in the property, if they proceed to take action against the present plaintiffs who continuous to be in possession

since 1972. In a suit for injunction question of title is not directly involved, but the court only has wants to see that whether the person claiming injunction is in possession or is in settled possession. In case, the court finds that the person is in legal possession, then he would be entitled to an injunction and in case, the court finds that the person in possession is in settled possession, even without authority of law, then too, the court would grant an injunction in favour of such a plaintiff and would leave the defendants to approach appropriate court or authority and take appropriate action for dispossession of such person.

10. As the plaintiffs are in settled possession for many years, there possession cannot be disturbed. The learned first appellate court was absolutely justified in granting a decree for injunction in favour of the plaintiffs. The question relating to sec.41 would not assume any importance at this stage. If the law permit the defendants to take appropriate actions or steps then they would be entitled to opt for such legal proceedings and in such case, they would be entitled to raise the question of application of sec.41 of Administration of Evacuee Property Act, 1950.

11.The appeal deserves to and is accordingly dismissed. Interim relief, if any, stands vacated. No costs.

12.A decree be framed accordingly.

(R.S. GARG, J.)

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